Area	Tension Point	Lead (s)	Assist	Statutory (S) or Regulatory (R) Implications
1. Business model concerns.				
	a. Difference in business plans between government and industry.	Elkington	O'Brien	Regulatory
	b. Commercial return on investment over years versus depot and competition requirements.	Elkington	O'Brien	Regulatory
	c. For-profit model versus non-profit business model conflict.	Elkington	O'Brien	Regulatory
	d. Government as customer versus Government as competitor (depot; labs).	McEwen	Kyes	Regulatory
2. Acquisition planning and requirements.				
	a. GPR: Scope, sunset, one size does not fit all paths to competition.	O'Brien		Regulatory
	b. Depot-level maintenance capability/requirements.	Kyes	Hamerlinck	Regulatory
	c. Sustainment is more than maintenance	Kyes	Hamerlinck	Regulatory
	d. What is necessary to comply with 2320(e)(3)'s requirement to address TD (and CS) needs in view of potential changes to sustainment strategy.	McEwen		Regulatory
	e. Access for limited purposes (cyber review; airworthiness; approvals) versus delivery as a CDRL under DFARS.	McEwen		Regulatory
	f. Software maintenance/sustainment requirements.	Kyes	Hamerlinck	Regulatory
	g. CDRL requirements for fundamental research programs versus CDRL needs for production/sustainment.			Regulatory
	i. Loss of (sustainment) support	Kyes	O'Brien, McEwen	
3. Source selection concerns.				
	a. Data rights as an evaluation factor.	Harris	McEwen, Hancock, Elkington	Statutory/Regulatory
	b. IP valuation versus evaluation factors and priced CLINs.			Regulatory
	c. Bid protest versus need to evaluate legality/business case for IP terms in proposals.	McEwen		Regulatory
	d. Need for Government flexibility to use existing tools versus need for legal review of H clauses and evaluation criterion (versus 10 U.S.C. 2320; versus CICA).	McEwen		Regulatory
4. Balancing the interests of the parties.				
	a. Funding as proxy.			
	i. Mixed funding: restore pre-2012 statutory language			Statutory
	ii. Indirect cost pools are considered privately funded	Branch	Elkington, Harris, Kyes	

	iii. Treatment of IRAD versus SFRAD for IP rights determinations. 1. IRAD Risk correct for limited/restricted rights	Kyes		
	iv. Funding test for rights: is it the correct test or is there a less complex alternative?	Kyes	Hancock	
	v. Commercial items vs noncommercial items	Kyes, McEwen		Regulatory
	b. Rights in relation to needs.			
	i. Commercial software terms versus Government-unique requirements.	McEwen		Regulatory
	ii. Authorized release and use of limited rights TD (two different points).	O'Brien		Statutory/Regulatory
	iii. Balance need for rights in IP versus need for competition.	McEwen		Regulatory
	iv. Are existing rights sufficient for depot, or is there a need for depot-specific, service specific, and program specific licenses.	Kyes	Hamerlinck	Statutory/Regulatory
5. Implementation concerns.				
	a. Software versus technical data.	Kyes	Elkington	Statutory
	b. Need to recognize differences between technical data and computer software versus need for simplified contracting.	Kyes	Elkington	Regulatory
	c. Development versus adaptation.	O'Brien	Kyes	Regulatory
	d. Form, fit & function (vs. segregation/reintegration or interface) technical data; software documentation versus FFF.	Kyes	Elkington	
	e. OMIT versus detailed manufacturing and process data (DMPD).	Hamerlinck	Kyes, McEwen	Statutory
	f. Rigid IP requirements versus need for flexible arrangements.	McEwen	Kyes	Regulatory
	g. Poor DID alignment with statutory/regulatory categories (FFF, OMIT, etc.).	McEwen		Regulatory
	<mark>h. 10 U.S.C. 2321 protections versus complexity too high to get meaningful case law. (Link to source of funding alternatives)</mark>			Statutory
	i. Embedded software (the object code) versus source code (human-readable) and software design documentation (the data used to produce the object code).	Kyes	Elkington	Statutory
	j. Mandatory flow-down (commercial subs and suppliers).	Kyes		Regulatory
	k. Segregation "at the clause level"—applying non-commercial clauses to commercial TD/CS.	McEwen		Regulatory
6. Compliance/Administrative concerns.				
	a. How to keep CDRL deliverable up-to-date.	McEwen		Regulatory

	b. Small Business Innovation Research (SBIR) – flow down to suppliers; inability to share with primes; how evaluated.	Brown		Regulatory
	c. Lack of trained personnel (e.g. IP strategy; draft SNLs; DFARS 227.7103-1; IP valuation; use of CDRLs related to data)	Hancock		Statutory
	d. Data assertion list (7017) – burden on contractor to prepare/Government to receive versus benefit to Government; confusion over lists lead to contract delays. i. Issue: Being required to substantiate assertion within short period in proposal phase of evaluation	McEwen		Regulatory
7. Data Acquisition concerns.				
	a. Deferred ordering period: 6 years (rather than perpetual).	O'Brien		Statutory
	<mark>b. Time limits on [priced] contract options – generally 5 years, extendable to 10?</mark>			Regulatory
	c. Deferred Ordering Part 1: data "generated ~~or utilized~~" under the contract.	O'Brien		Statutory
	d. Deferred Ordering Part 2: all interface or major systems	O'Brien		Statutory
	e. Failure to define and order CDRLs/reliance on deferred ordering and DAL to obtain data (Already covered, possibly repetitive).	McEwen		Regulatory
	f. Deferred delivery versus escrow.	McEwen		Regulatory
8. Modular Open Systems Architectures (MOSA) concerns.				
	a. GPR in MSI even if DEPE and MSI developed with mixed funding.	O'Brien		Statutory
	b. GPR in interfaces developed with mixed funding.	O'Brien		Statutory
	c. Open interfaces versus preference for industry standards; standards maintenance.	Elkington	McEwen	Regulatory
9. Section 809 Panel Recommended Items				
Provide issue and why should be looking at it	a. Poor alignment between 10 U.S.C. 2320 and other markings (e.g., distribution statements), clauses (DFARS 252.204-7000), and contract attachments (DIDs; DAL).	McEwen	Kyes	Regulatory
	b. Complexity of the IP scheme versus ability of commercial and small businesses to comply (SEC 809)	McEwen	Kyes	Regulatory
	c. Depot policies challenges, what is agreed upon as a depot requirement needs to harmonize with the data rights provisions.			